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COMMISSIONERS

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING TO INSTALL A WATER LINE
FROM THE WELL ON TIEMAN TO WELL
NO. 1 ON TOWERS.

Docket No. W-04254A-12-0204

ORIGINAL

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING TO PURCHASE THE WELL
NO. 4 SITE AND THE COMPANY
VEHICLE.

Docket No. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING FOR AN 8,000-GALLON
HYDRO-PNEUMATIC TANK.

Docket No. W-04254A-12-0206

IN THE MATTER OF THE RATE
APPLICATION OF MONTEZUMA
RIMROCK WATER COMPANY, LLC.

Docket No. W-04254A-12-0207

JOHN E. DOUGHERTY,

COMPLAINANT,

Docket No. W-04254A-11-0323

V.

MONTEZUMA RIMROCK WATER
COMPANY, LLC

RESPONDENT

1 IN THE MATTER OF THE APPLICATION
2 OF MONTEZUMA RIMROCK WATER
3 COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE.

Docket No. W-04254A -08-0361

4 IN THE MATTER OF THE APPLICATION
5 OF MONTEZUMA RIMROCK WATER
6 COMPANY, LLC FOR APPROVAL OF A
7 FINANCING APPLICATION.

Docket No. W-04254A -08-0362

**MONTEZUMA RIMROCK
WATER COMPANY
EXCEPTIONS TO
RECOMMENDED OPINION AND
ORDER**

8
9 Montezuma Rimrock Water Company LLC ("MRWC" or the "Company") hereby
10 files its Exceptions to the Recommended Opinion and Order ("ROO") dated March 26,
11 2014. Generally, the Company does not believe that the ROO correctly and fairly applies
12 the testimony and evidence presented at hearing in this matter on the issues and findings
13 noted below. The ROO also violates general notions of due process and fairness by
14 adopting rates using methodology that was not presented in any witness testimony in the
15 case. MRWC respectfully requests that the Commission take an objective and fair look at
16 the underlying evidence and testimony and adopt the exceptions noted below.

17 **I. The 8,000 GALLON HYDRO-PNEUMATIC PRESSURE TANK.**

18 In this case, MRWC seeks financing approval for purchase of an 8,000 gallon
19 hydro-pneumatic pressure tank from Ms. Olsen's son (Sergei Arias). At hearing, the
20 evidence established that the Company's existing pressure tank is in poor condition, has
21 been repaired on prior occasions and is in need of replacement.¹ Mr. Arias had purchased
22 a used 8,000 gallon pressure tank at auction and agreed to sell it to MRWC for \$15,000.
23 At hearing, the evidence was undisputed that the used pressure tank is in good condition
24

25 ¹ Tr. II at 440:21-25 (Olsen). ("Q. And did you see it as a unique opportunity? A. Yes,
26 because the hydro-tanks that we have have been repaired, and as a matter of fact, last
week the tank that this new hydro-tank is supposed to replace, failed again, and it took
them a while to try to fix it.") (question by ALJ Harpring).

1 and that the \$15,000 acquisition price is substantially below what it would otherwise cost
2 MRWC for a new 8,000 gallon storage tank.² Ms. Olsen visually inspected the tank and
3 had a tank inspection done by a welder—both showing that the tank is in good condition.³
4 In fact, the welder that inspected the tank confirmed “that the tank was in good shape and
5 that it was worth \$15,000.”⁴ At hearing, Commission Staff Engineer Marlin Scott
6 testified that he reviewed/inspected MRWC’s water system and determined that the used
7 tank would be beneficial, useful and necessary for MRWC’s system⁵ As such,
8 Commission Staff recommended approval of the \$15,000 financing request for the 8,000
9 gallon pressure tank, along with an additional \$3,541 in installation expenses. That
10 \$3,541 installation cost was based on Commission Staff’s engineering experience.

11 On page 74-75, however, the ROO concludes that “[w]hile there is evidence that
12 Montezuma’s system may benefit from addition of a new pressure tank, there is not
13 sufficient evidence in this record to establish that the \$15,000 price for the used 8,000
14 gallon-tank purchased by Sergei Arias in 2011 is reasonable and appropriate and that
15 Montezuma’s ratepayers should be required to pay it.”⁶ In turn, the ROO concludes that
16 “without sufficient credible evidence of the actual price paid for the pressure tank, in the
17 form of third-party documentation such as an invoice, and an actual estimate for the cost
18 to make the necessary modifications to the tank and install it on the system, we find that it
19 would be neither reasonable nor appropriate to approve the Arias Docket financing
20 applications, and we will not do so.”⁷

21 MRWC requests that the Commission reconsider that finding and approve the
22 proposed financing for the used 8,000 gallon pressure tank as recommended by

23 ² Tr. I at 73:3-8 (Olsen).

24 ³ *Id.* at 189:9-23 (Olsen).

25 ⁴ *Id.* at 190:24-25 (Olsen).

26 ⁵ Tr. IV at 695:17-696:1 (Scott).

⁶ ROO at 74:24-27.

⁷ ROO at 75:8-11.

1 Commission Staff in the amount of \$18,541 in the best interests of ratepayers. The
2 evidence establishes that the used tank is in good condition and justifies a price of
3 \$15,000. Staff's engineering opinions on an appropriate cost for installation should be
4 enough to demonstrate the cost of installation. The evidence is undisputed that the
5 Company's existing pressure tank is in need of replacement. Little is to be gained from
6 the ROO's recommended denial of financing for this used tank under these circumstances.

7 If the Commission follows the ROO and denies financing approval for the Arias
8 tank, then Mr. Arias surely will sell the used tank, leaving the Company with no option
9 when the existing pressure tank inevitably fails but to purchase a new 8,000 gallon
10 pressure tank, at a cost substantially more than the proposed \$15,000 for the Arias tank.
11 To illustrate that point, after issuance of the ROO, Ms. Olsen contacted a pressure tank
12 supplier (HDSFM d/b/a USA Bluebook) for a quote for a new 8,000 gallon hydro tank.
13 That March 31, 2014 quote was for \$37,563 as set forth in the attached email and quote
14 from USA Bluebook (attached as **Exhibit A**), not including installation costs. Ms. Olsen
15 also obtained a quote from J&B Sales Co. in Phoenix for \$67,607.00. That quote also is
16 attached as **Exhibit A**.

17 For obvious reasons, forcing MRWC to purchase a brand new tank at more than
18 two to three times the price of the Arias tank does not serve the public interest or
19 MRWC's customers. Further, if the existing pressure tank fails and cannot be repaired,
20 MRWC will not be able to immediately finance purchase of a \$40,000-60,000 pressure
21 tank, likely forcing the Company to file a request for an emergency surcharge. As such,
22 MRWC requests that the Commission approve the requested financing for the Arias tank.

23 **II. REVENUE REQUIREMENT AND RATE BASE ANALYSIS.**

24 On page 101, the ROO states that "[b]ased upon [Test Year] total operating
25 revenue of \$101,276 and minimally adjusted TY total operating expenses of \$83,226,
26 however, it appears that the \$17,736.60 in total lease payments would result in operating

1 income of \$313.40... These figures suggest that Montezuma will still be able to break
2 even with the debt from the two leases, even if the rates were not increased to cover
3 them.”⁸ Unfortunately, these conclusions in the ROO do not accurately reflect MRWC’s
4 adjusted operating expenses. As set forth in Mr. Becker’s responsive testimony, Schedule
5 GWB-3, MRWC has adjusted Test Year Operating Expenses of \$126,452, leaving
6 MRWC with a \$25,176 revenue deficit on test year revenues of \$101,276.

7 In its recommendations and testimony, Commission Staff used a Cash Flow
8 Analysis to recommend rates and a revenue increase of \$27,946, sufficient for the
9 Company to pay all of its operating expenses, including the arsenic leases. Commission
10 Staff’s cash-flow analysis allowed recovery of the full amount of the Nile River and
11 Financial Pacific leases, recognizing the importance of the ATF and associated facilities.

12 The ROO, however, rejects that cash flow analysis and instead uses the
13 Administrative Law Judge’s own rate base analysis without any supporting testimony or
14 evidence. The ROO rejects Commission Staff’s cash flow analysis and adopts a
15 traditional rate base methodology for setting rates. The notion of applying traditional rate
16 base methodology was not raised by any party at hearing and was not addressed in the
17 testimony of any witness.

18 Given its cash flow and financial condition, the Company did not have sufficient
19 revenue to hire or retain a rate analyst. Ms. Olsen filed the 2012 rate case herself and, in
20 turn, the Company accepted Commission’s Staff’s cash flow analysis and
21 recommendations. There was no evidence or testimony presented at hearing relating to
22 setting rates based on rate base and there was no evidence presented regarding MRWC’s
23 capital structure, cost of equity, cost of debt or weighted average cost of capital. By
24 converting this rate case from a cash flow analysis to a rate base analysis, the ROO has
25 deprived MRWC of any notice or opportunity to present evidence or cross examine

26 ⁸ ROO at 101:16-17.

1 witnesses on those issues. Perhaps more importantly, MRWC simply has not had an
2 opportunity to determine whether the ROO's rate base methodology will provide the
3 Company with sufficient revenue to maintain operations and pay all expenses.

4 As noted on page 105 of the ROO, the Company's proposed rate increase was
5 based on operating expenses and operating margin. The Company agreed to determine
6 FVRB based on OCRB, but the Company did not agree to set rates based on rate base. In
7 fact, that issue was not raised at the hearing by any witness or party. In turn, Commission
8 Staff applied its cash flow analysis in order to allow the Company sufficient revenue to
9 pay its operating expenses, including the full lease payments under the Nile River and
10 Financial Pacific leases. As noted in Mr. Becker's Responsive Schedules GWB-3 and
11 GWB-4, Commission Staff recommended that the arsenic media costs (\$16,280) be
12 recovered in operating expenses. As noted in Mr. Becker's testimony, Commission Staff
13 recommended \$126,452 in operating expenses with a revenue increase of \$27,946 (over
14 test year revenues of \$101,276), leaving the Company with \$2,770 in operating income.
15 In his testimony, Mr. Becker testified that the \$2,770 in working capital was necessary
16 for the Company to cover its expenses, including the arsenic leases. Commission Staff
17 did not present any testimony relating to the Company's capital structure, cost of debt,
18 cost of equity or return on rate base, all as necessary to apply a weighted average cost of
19 capital analysis to FVRB/OCRB. As a matter of due process, fairness and based on the
20 lack of underlying evidence, the Commission should reject the ROO's rate base
21 methodology and adopt Commission Staff's cash flow analysis.

22 The Administrative Law Judge did not request that either the Company or
23 Commission Staff present testimony on that methodology during the hearing. To adopt
24 that methodology now would violate the Company's due process rights. For example, the
25 ROO does not explain how it calculated the rate of return of 11.29% noted on page 115,
26 what capital structure was used to determine a weighted average cost of capital or whose

1 testimony or analysis the ROO relies on in arriving at that figure. The Commission
2 should not set rates based on an unsupported rate setting methodology not adopted by any
3 witness in the case. Aside from the due process violations associated with the ROO, the
4 Company also did not have the opportunity to cross-examine any witness on the impacts
5 of this methodology and the Company did not have the opportunity to consult any
6 technical experts regarding that methodology.

7 Even worse, the practical effect of the ROO's use of rate base and rate of return
8 methodology is a recommended revenue requirement that does not leave MRWC with
9 sufficient revenue to pay its operating expenses, including the Financial Pacific and Nile
10 River leases. On page 115, the ROO recommends a revenue increase of \$25,507, rather
11 than the \$27,946 as recommended by Commission Staff. That revenue reduction will not
12 provide sufficient revenue for the Company to pay all of its operating expenses, including
13 the arsenic leases. Yet another problem with the rate base methodology adopted in the
14 ROO is that it places 37% of the arsenic plant in rate base and all of the arsenic media in
15 rate base and then applies a 11.29% rate of return to those items. Presumably, the ROO
16 includes the full amount for the arsenic building in rate base. Of course, the Nile River
17 lease applies a 35% interest rate and the Financial Pacific lease applies a 28% interest rate,
18 indicating that the Company's cost of debt for those items may be higher than the return
19 on those items.

20 Normally, a utility likely would not oppose including plant in rate base, presuming
21 a fair and adequate rate of return. Unfortunately, the ROO also lowers the Company's
22 monthly rates as recommended by Staff and agreed to by the Company—again without
23 any supporting testimony. For example, for a 5/8" meter, Commission Staff and the
24 Company agreed to a monthly rate of \$30.00 per 1,000 gallons. On page 115, however,
25 the ROO adopts a rate of \$28.00 per 1,000 gallons for a 5/8" meter. The record does not
26 contain any testimony or evidence relating to the new rates proposed in the ROO or how

1 those rates will affect the Company's ability to pay operating expenses, including the
2 arsenic leases. The Company was not notified of any such reduced rate proposal prior to
3 issuance of the ROO and those reduced rates proposed in the ROO are not based on any
4 witness testimony or Commission Staff analysis.

5 The ROO's reduction in revenue is even more alarming because the Company
6 expects that the arsenic media will need replacement in the near future. The ATF began
7 operation in November 2012, which means that the two-year life of the existing arsenic
8 media will be up in November 2014. When the arsenic media requires replacement, the
9 Company will be faced with the prospect of incurring at least \$16,000 in media costs,
10 without sufficient revenue to pay for it. Companies typically require a 50% payment for
11 arsenic media up front with the remaining 50% upon delivery. On page 103, the ROO
12 finds that those media costs should be capitalized under the NARUC Uniform System of
13 Accounts for Class C Utilities. Yet again, however, there was no witness testimony
14 regarding the NARUC System of Accounts on that issue or the costs and benefits of
15 placing the media in rate base rather than operating expenses. The notion of capitalizing
16 those costs under the NARUC System of Accounts as stated on page 103 of the ROO,
17 rather than expensing the media costs as recommended by Staff, was not addressed in any
18 witness testimony.

19 Because the ROO's rate base methodology is not based on any witness testimony,
20 it bears emphasis that neither the Company nor Commission Staff has had the opportunity
21 to evaluate the long-term consequences for the rate base methodology proposed in the
22 ROO. For example, the Company didn't have any opportunity to evaluate the impact of
23 capitalizing the media costs in terms of financing sources, depreciation expenses,
24 amortization rates or any other similar issues. The Company would prefer not to file any
25 appeals to the order in this rate case, but adopting the ROO as written may leave the
26 Company no choice but to file what clearly would be a strong appeal of the ROO relating

1 to the above issues and various due process violations.

2 **III. FINANCING APPROVAL FOR THE ATF LEASE.**

3 On page 105, the ROO concludes that the arsenic lease from Financial Pacific for
4 the Arsenic Treatment Facility ("ATF") shall only be approved in the amount of \$24,316
5 for the ATF because only 37% of the ATF is currently used and useful. Thus, it appears
6 that the ROO only approves 37% of the debt/lease amount for the ATF under the lease
7 with Financial Pacific. This finding is impractical and problematic for several reasons.

8 On that issue, the Company still is obligated to pay the full amount for the
9 Financial Pacific lease (60 payments of \$1,135.96 per month). By using the above
10 mentioned rate base methodology and then excluding 63% of the ATF from rate base, it
11 appears that the ROO does not authorize sufficient revenue to cover the lease payments to
12 Financial Pacific. Further, under the ROO, depreciation expense is used primarily to
13 cover the arsenic media costs. The Company's obligation to pay the full amount of the
14 Financial Pacific lease does not go away simply because the ROO approves only 37% of
15 the financing. Obviously, as noted in the recent emergency surcharge docket, Financial
16 Pacific will repossess the ATF if the Company is unable to make all required payments.

17 Adopting the ROO without recognizing the full amount of the Financial Pacific
18 lease payments as recoverable or providing sufficient operating income for the Company
19 to make those lease payments would be contrary to the public interest. The Commission
20 should reject the ROO's findings on this issue, and approve the entire amount of financing
21 for the ATF and adopt Commission's Staff's cash flow analysis and recommendations.

22 **IV. LEGAL AND RATE CASE EXPENSE.**

23 On pages 108-111, the ROO recommends that the Commission authorize
24 \$16,196.76 in non-rate case legal expense, normalized over four years, instead of the
25 \$41,339.58 recommended by Commission. On page 112, the ROO recommends rate case
26 expense of \$46,362.75, instead of the \$57,000 recommended by Commission Staff. The

1 ROO's justification for those numbers are those legal expenses were incurred as a result
2 of actions by the Company and that it would be patently unfair for ratepayers to bear the
3 burdens of those costs. To say the least, the ROO recommendations regarding legal and
4 rate case expense is dramatically unfair and contrary to the evidence.

5 Commission Staff and Mr. Becker recommended \$57,000 in rate case amortized
6 over four years, or \$14,250 per year.⁹ Unfortunately, the actual rate case expense in these
7 consolidated dockets is substantially higher. At hearing, MRWC requested that the
8 Commission authorize \$92,725.50 in rate case expense, amortized over five years, or
9 \$18,545.10 per year, due primarily to the extended proceedings conducted in these
10 consolidated dockets. The legal expenses in this rate case resulted from five days of
11 hearing, drafting of pre-filed testimony, responding to numerous motions filed by Mr.
12 Dougherty including two dispositive motions, extensive briefing ordered by the ALJ and
13 the consolidation of the rate case with Mr. Dougherty's complaint proceeding.

14 At the procedural conference on February 23, 2013, MRWC requested that the rate
15 case proceed independently of Mr. Dougherty's complaint proceeding and that the rate
16 case proceed expeditiously without filing of testimony and based on issuance of a staff
17 report as is typical for Class D utilities. The Company made that request in an effort to
18 expedite the rate case and minimize rate case expense. On February 25, 2013, however, a
19 Procedural Order was issued consolidating the rate case with Mr. Dougherty's complaint
20 docket and requiring the parties to file direct and rebuttal testimony, along with an
21 evidentiary hearing that lasted five days with eight witnesses. That decision dramatically
22 increased rate case expense through no fault of MRWC or its counsel.

23 As expressly found by Commission Staff in its recommendations, blaming the
24 Company for the rate expenses is not fair or reasonable. MRWC filed its rate application
25 on May 31, 2012 and the hearing commenced on June 20, 2013—385 days later. That is a

26 ⁹ Ex. S-1, Direct Testimony of Gerald Becker ("Becker DT"), at 15.

1 significant period of time for a Class D utility. It also should be noted that an expedited
2 rate case may have obviated the Company's need for an emergency surcharge relating to
3 the arsenic leases.

4 During that time period, Mr. Dougherty's filings and actions in this case have
5 dramatically increased legal costs. After MRWC filed its rate case on May 31, 2012, and
6 Mr. Dougherty filed his motion to intervene on June 7, 2012, Mr. Dougherty had made a
7 total of 32 filings in the rate case as of closing briefs (in addition to over 40 filings in the
8 other dockets), including 24 motions. Mr. Dougherty filed his motion to intervene on
9 June 7, 2013 and the rate case hearing commenced on June 20, 2013, a period of 378
10 days. During that time period, Mr. Dougherty made 32 total filings or a filing every 12
11 days and he filed 24 motions or one motion every 16 days.

12 Under these circumstances, it would be patently unfair and unjust to force MRWC
13 or its attorneys to pay such increased rate case expense. MRWC made every effort to
14 avoid increased legal costs in the rate case. As testified by Mr. Becker, a substantial
15 burden was placed on the Company in responding to various motions, data requests and
16 other filings from Mr. Dougherty.¹⁰ As a matter of fairness, the Company should not have
17 to bear the financial costs of such legal burdens placed on the Company in this case. The
18 ROO's recommendations regarding legal and rate case expense are patently unfair and
19 unreasonable under the circumstances of this case.

20 Mr. Dougherty has spent the last four years doing everything in his power to harm
21 the Company and Ms. Olsen. Mr. Dougherty's testimony regarding his motivations
22 speaks for itself and are contrary to the conclusions in the ROO:

23 If the company had filed the proper leases, the real leases on March 22nd, or
24 if the company had disclosed those in an April 27th brief, the company had
25 raised those at the April 30th procedural conference, this Commission then
26 would have had the opportunity to review those leases, not in a rate case
setting, but as an operational setting, as the Staff had filed in the docket that

¹⁰ Tr. IV at 1076:2-20 (Becker).

1 the leases are not a rate case item. *And if that had been done, this would*
2 *have taken months, well into the summer. The company would have*
3 *violated the ADEQ consent order and we would have been in an entirely*
4 *different regulatory environment.* And I believe that the customers of
5 Montezuma Rimrock Water Company would greatly benefit from the
consolidation of that water company with a much larger company -- let me
finish -- that provides water at lower rates than being proposed in this rate
case, that provides water that is arsenic free, and that has long expressed
interest in that service area.¹¹

6 In his own words, Mr. Dougherty's actions were motivated by his desire to place MRWC
7 in violation of the ADEQ Consent Order, in the hopes of orchestrating Arizona Water
8 Company's acquisition of the Company. Mr. Dougherty went on to say that "[t]his
9 company is not fit to be a public service corporation. And the CC&N, and the sale and
10 transfer of the company, should be declared null and void. *That's my end goal.*"¹²

11 The legal expenses and rate case expenses incurred by the Company reflect Mr.
12 Dougherty's efforts to put the Company out of business and the ROO's conclusions that
13 those costs should be borne primarily by the Company is simply not supported by the
14 evidence or fair. The Commission should reject the ROO's findings relating to legal and
15 rate expense and instead adopt the Company's request for \$92,725.50 in rate case

16
17 ¹¹ Tr. II at 813:7-814:6 (Dougherty). Like much of Mr. Dougherty's testimony, his statements
18 relating to MRWC's water rates being significantly higher than AWC's water rates are false. As
19 recommended by Mr. Becker, and agreed to by MRWC, the Staff recommended rates for a 5/8"
20 meter is \$30.00 per month for the usage charge along with \$2.50 per 1,000 gallons for 0-3,000
21 gallons; \$4.17 per 1,000 gallons for 3,001-9,000 gallons; and \$6.67 per 1,000 gallons for over
22 9,000 gallons. Becker RT, Schedule GWB-7, p. 2. By comparison, AWC's existing tariff for its
23 Verde Valley System (including Pinewood and Rimrock) includes a minimum charge of \$23.10
24 for a 5/8" meter, along with commodity rates of \$3.3891 per 1,000 gallons for 0-3,000 gallons;
25 \$4.2361 per 1,000 gallons for 3,001-10,000 gallons; and \$5.2954 per 1,000 gallons for over
26 10,000 gallons. ACC Decision No. 71845, Arizona Water Company Tariff WG-286 filed August
30, 2010, Water Rates – General Service for Verde Valley System. That's not to mention that
AWC has a rate case currently pending for its Northern Division (including the Verde Valley
system). In that case, the parties filed a settlement agreement on April 15, 2013, including
proposed rates for the Verde Valley (Rimrock/Pinewood) system of a \$25.33 monthly charge for
a 5/8" meter with commodity rates of \$2.1210 for 0-3,000 gallons; \$3.5527 for 3,001-10,000
gallons; and \$4.4860 for over 10,000 gallons. Staff Notice of Filing Settlement Agreement dated
April 15, 2013, Docket No. W-01445A-12-0348, Settlement Schedule H-3, p. 13. That
settlement agreement also included authorization of an Arsenic Cost Recovery Mechanism for
AWC's Navajo and Verde Valley systems—an additional charge not present for MRWC.

¹² Tr. II at 840:10-15 (Dougherty) (emphasis added).

1 expense, amortized over five years, or \$ 18,545.10 per year. At minimum, the
2 Commission should adopt Staff's recommendation for \$57,000 in rate case expense. The
3 Commission also should adopt Staff's recommendation of \$41,339.58 in non-rate case
4 legal expense. Adopting the ROO's recommendations regarding legal and rate case
5 expense likely will prevent the Company from retaining legal counsel in the future, as
6 well as sending a stark message to attorneys not to represent small water companies with
7 operational and financing issues. Aside from the ROO, MRWC and Ms. Olsen will still
8 have an obligation to pay its legal and rate case expense, further jeopardizing the
9 Company's cash flow and financial condition.

10 **V. 2009 SURCHARGE REFUND.**

11 On Page 127, the ROO addressed the Company's unauthorized implementation of
12 a 2009 arsenic surcharge and states that "Montezuma has admitted that this collection
13 was made right after the current rates were approved and, further, that the arsenic
14 surcharges collected in 2009 were never refunded to customers and were ultimately used
15 for Montezuma's operations." In turn, the ROO recommends that the Company issue a
16 \$10.11 refund or credit to all customers.

17 On this issue, the Company does not believe that it is appropriate for the
18 Commission to assess a surcharge credit to all customers without determining how many
19 customers actually paid the surcharge back in 2009. Also, given the Company's financial
20 situation, ordering the Company to credit customers at \$10.11 each (resulting in a revenue
21 reduction of \$2,000 plus) again would place the Company in the same situation of
22 insufficient revenue to make necessary payments for operating expenses, including the
23 arsenic leases. There simply is no reason for refunding those surcharges nearly five years
24 after the fact, other than to punish the Company and jeopardize its operations. The
25 Commission should reject this recommendation in the ROO. To the extent the
26 Commission is inclined to order a refund, the Commission should normalize any refund

1 amount over a 5-6 month period so as to lessen the impact on MRWC's operating income.

2 **VI. OTHER ISSUES.**

3 Unfortunately, the ROO contains various other findings and conclusions that are
4 contrary to the underlying evidence and unsupported. Because the Company and Ms.
5 Olsen believe that the ROO doesn't accurately reflect the facts or underlying evidence, the
6 Company believes it is necessary to address and file exceptions to those various issues.

7 The ROO's conclusions relating to Ms. Olsen's attempts to hide the capital leases
8 from the Commission is not supported by substantial evidence in this case. On page 98,
9 the ROO states that "the evidence supports Mr. Dougherty's assertion that the invalid one-
10 page lease documents were signed by Ms. Olsen and filed with the Commission to avoid
11 the appearance that Montezuma had entered into capital leases creating long-term debt
12 that required Commission approval at a time when Montezuma was desperate to comply
13 with the ADEQ Consent Order deadline of April 7, 2012, for Montezuma to complete
14 construction of the arsenic treatment system...When Montezuma missed the deadline and
15 received another NOV from ADEQ on April 11, 2012, Montezuma received another brief
16 but was also aware that adverse action would be taken by ADEQ if it did not comply.
17 This is the context in which Montezuma failed to reveal the true capital leases...." Based
18 on those circumstances, the ROO concludes that the Company and Ms. Olsen
19 intentionally failed to file the Nile River and Financial Pacific leases with the Company .
20 That finding is not supported by substantial evidence.

21 To start, there is absolutely no evidence that Ms. Olsen signed the Nile River
22 personal leases for herself and Nile River. To the contrary, Ms. Olsen testified that she
23 did not sign those leases for Nile River and that she doesn't know who did.

24 On these issues, the ROO elevates form over substance but focusing on
25 circumstances, assumption and innuendo, rather than hard evidence. Even if the
26 Commission does not find Ms. Olsen's explanations relating to the leases as credible, that

1 doesn't mean that there is any evidence relating to a scheme to avoid Commission review
2 and approval of the leases. The substantial evidence in the record is contrary to the
3 conclusions in the ROO.

4 Aside from Ms. Olsen's testimony, the personal leases filed by the Company with
5 the Commission in March and April 2012 have the same financial terms as the Company
6 leases with Financial Pacific and Nile River.¹³ Those leases are for the same scopes of
7 work, have the same lease terms, involve the same monthly payment amounts and have
8 the same financial costs. Thus, the Commission and Mr. Dougherty knew the basic deal
9 points for the ATF in March 2012. It defies common sense for Ms. Olsen to implement a
10 scheme to avoid Commission review of leases with the same terms, conditions and
11 amounts. The more likely scenario is exactly what Ms. Olsen testified to at hearing—she
12 got caught up in the issues relating to installation of the ATF, got confused relating to the
13 various leases and made a paperwork mistake. It also bears emphasis that neither the
14 Commission nor customers were harmed by the Company's paperwork errors—a fact
15 acknowledged and emphasized by Mr. Becker in his testimony.

16 On page 99, the ROO concludes that had Mr. Dougherty not filed his complaint,
17 the Commission "might never have seen or considered the true and complete capital
18 leases that had been executed by Ms. Olsen for Montezuma in March 2012." That
19 statement is simply not supported by any evidence—the Company filed its rate case in
20 May 2012, knowing full well that the Commission would review and evaluate the arsenic
21 leases. Because Mr. Dougherty had blocked the WIFA financing and because the
22 Commission did not approve MRWC's request for private financing, those Company
23 leases were the only financing options available to MRWC.¹⁴ Perhaps most importantly,
24 Commission Staff understood that the Company was moving forward with construction of

25 ¹³ Tr. I at 533:14-534:13 (Olsen).

26 ¹⁴ Tr. I 534:14-18 (Olsen); Ex. A-2, Olsen DT at 5; Tr. IV at 1058:23-25 (Becker).

1 the ATF in April 2012 and agreed that the most important consideration was getting the
2 ATF installed.¹⁵ Following the Nile River and Financial Pacific leases, MRWC moved
3 forward with construction of the ATF—with the full knowledge and approval of
4 Commission Staff and ADEQ. The Company completed construction in July 2012 and
5 the ATF became operational in November 2012.¹⁶ ADEQ issued its Approval of
6 Construction on November 21, 2012.¹⁷ As testified by Mr. Becker, even if MRWC had
7 filed the correct leases in March 2012, his recommendations would have been the same.

8 Finally, the ROO does not reflect the extenuating circumstances surrounding the
9 ATF in 2012. At that time, Ms. Olsen was almost entirely engrossed in getting the ATF
10 plant constructed, installed and operational. She is a one-person shop and she simply
11 didn't have the time or resources to complete construction of the ATF at the same time as
12 filing for approval of those leases. Ms. Olsen was under an extreme amount of stress due,
13 in large part, to Mr. Dougherty and Mr. Buddeke, along with facing financial fines from
14 ADEQ.¹⁸ Ms. Olsen and MRWC are not sophisticated business entities.

15 Ms. Olsen was confused about the leases and dealings with Odyssey Financial,
16 Nile River and Financial Pacific. She did not receive any final copies of the company
17 leases with Nile River and Financial Pacific until July/August 2012—a fact attested to by
18 Mr. Torbenson at hearing. The only signed leases she had up to that point of time were
19 the leases purportedly signed by Nile River with Ms. Olsen personally.

20 The ROO also is contrary to the testimony from Mr. Scott and Ms. Burns at
21 hearing. Ms. Olsen had been in contact with Commission Staff about the ATF and leases
22

23 ¹⁵ Tr. IV at 931:1-932:25 (Becker); Tr. II at 699:15-700:14 (Scott); Tr. II at 485:15-18 (Burns).

24 ¹⁶ Tr. I at 103:7-13 (Olsen).

25 ¹⁷ Ex. A-13, ADEQ Approval of Construction Partial Approval dated 11/21/2012.; Tr. I at 104:2-
16 (Olsen).

26 ¹⁸ Ex. A-2, Olsen DT at 13-14, 25-26; Tr. II at 338:17-339:25, 433:9-20 (Olsen); Tr. IV at 918:4-
919:24 (Becker).

1 during the summer of 2012.¹⁹ Commission Staff did not advise Ms. Olsen that she could
2 not move forward with construction of the ATF until the financing had been approved.
3 Rather, Commission Staff supported installation of the ATF for the reasons stated by Mr.
4 Becker and Mr. Scott. As testified by Mr. Becker, approval of these leases is just,
5 reasonable and in the public interest “[b]ecause they were crucial to getting the arsenic
6 remediated and the company really didn’t have any other alternatives.”²⁰

7 Mr. Scott testified that he and Ms. Olsen had been in communication relating to the
8 arsenic leases, which necessarily means that Ms. Olsen was not hiding anything from the
9 Commission and further supports the notion that Ms. Olsen and MRWC intended for
10 Commission Staff to review and evaluate those leases.²¹

11 Mr. Scott discussed the concept of leases with Ms. Olsen during one of his first site
12 visits as well as a discussion on or about September 28, 2012.²² Mr. Scott also testified
13 that “leasing” came up during the April 26, 2012 meeting with ADEQ.²³ Obviously,
14 Commission Staff did not take the position that MRWC could not move forward with
15 installation of the ATF pending financing approval for the debt under the leases.

16 Like Mr. Scott, Ms. Olsen was in constant communication with Ms. Burns and
17 ADEQ—again showing that Ms. Olsen and MRWC were cooperating and working with
18 state regulatory agencies.²⁴ Members of ADEQ and ACC met on April 17, 2012 to
19 discuss the MRWC compliance issues, including Ms. Burns, Ms. Colquitt and Ms. Cross
20 of ADEQ and Mr. Scott, Mr. Michlik and Ms. Scott of the Commission.²⁵ ADEQ, ACC
21 and Ms. Olsen then met on April 26, 2012. According to Ms. Burns, Ms. Olsen advised

22 ¹⁹ Ex. A-2, Olsen DT at 12.

23 ²⁰ Tr. IV at 1058:23-25 (Becker).

24 ²¹ *Id.* at 699:1-700:14 (Scott).

25 ²² *Id.* at 715:23-716:6 (Scott).

26 ²³ *Id.* at 716:22-23 (Scott).

²⁴ *Id.* at 475:23-476:3 (Burns).

²⁵ *Id.* at 479:5-15 (Burns).

1 ADEQ and Commission Staff that she was in the process of getting the ATF installed by
2 June 7, 2012 and that Ms. Olsen presented "a letter and that there was a lease
3 agreement."²⁶ Ms. Burns testified that her impression "at the end of that meeting was that
4 the company was moving forward and that the, with the arsenic treatment facility, and it
5 would be installed shortly."²⁷ At that meeting, ADEQ stressed to Ms. Olsen that penalties
6 would be assessed if the Company did not meet the installation deadline of June 7, 2012.²⁸
7 In no uncertain terms, "it was clear to everyone in that [meeting] that the company was
8 moving forward with construction of the arsenic treatment plan and installation."²⁹

9 On May 1, 2012, Mr. Dougherty then sent an email to Ms. Burns noting that the
10 Commission had not yet approved financing for an ATF.³⁰ Ms. Burns forwarded that
11 email to ADEQ Director Fulton who, in turn, forwarded that email to Utilities Division
12 Director Steve Olea and ultimately to Staff attorney Charles Hains.³¹ These facts establish
13 that Commission Staff knew that MRWC was moving forward with leases of the ATF in
14 June 2012. Ms. Burns testified that everyone attending the April 26, 2012 meeting
15 thought it was a good idea to get the ATF in the ground.³²

16 In terms of compliance, Ms. Burns testified that MRWC received an approval of
17 construction for the ATF from ADEQ and that the Company is in "full compliance" with
18 arsenic standards.³³ Ms. Burns went on to testify that she believes Ms. Olsen and MRWC
19 "made reasonable good faith efforts to comply with the arsenic treatment requirements
20 and installing an arsenic treatment facility for a small water company of [MRWC's]
21

22 ²⁶ *Id.* at 482:15-18 (Burns).

23 ²⁷ *Id.* at 483:23-484:3 (Burns).

24 ²⁸ *Id.* at 485:3-8 (Burns).

25 ²⁹ *Id.* at 485:15-18 (Burns).

26 ³⁰ Ex. C-52, email from J. Dougherty to V. Burns dated 5/1/2012.

³¹ Tr. II at 488:23-489:3 (Burns).

³² *Id.* at 495:7-11 (Burns).

³³ *Id.* at 489:19-23, 491:4 -18 (Burns).

1 size.”³⁴ As testified by Ms. Burns, the ADEQ Consent Orders issued to MRWC requires
2 the Company to install the ATF “no matter what happens with the funding” and “no
3 matter whether the ACC approves the funding.”³⁵ That authority stems from ADEQ’s
4 status as “the responsible agency by statute for compliance with Safe Water Drinking
5 standards for potable water provided to customers or citizens of Arizona.”³⁶ Under these
6 circumstances, the Company requests that the Commission strike the various conclusions
7 in the ROO regarding Ms. Olsen’s motivations and attempts to avoid Commission review
8 of the leases as unsupported by the evidence, unnecessary and retaliatory.

9 On Page 103, the ROO states that “[w]e have serious concerns, including that
10 Montezuma, and Ms. Olsen individually, misled the Commission both actively and
11 through omission by providing incorrect information about Montezuma’s plan to
12 remediate its arsenic level and about the status of its leases; by filing personal leases that
13 Mr. Olsen knew were not valid and contained forged signatures...” The statements in the
14 ROO that Ms. Olsen knew the leases were not valid and/or forged are not supported by
15 substantial evidence. Ms. Olsen was the only witness on those issues and she testified that
16 she was confused about the leases, that she believed the Nile River signatures to be valid
17 and that she did not forge any signatures. The statements in the ROO on page 103, line 22
18 through page 104, line 6 should be stricken.

19 The Company also takes exception to a number of other factual errors in the order.
20 On page 15, the ROO states that “Mr. Dougherty testified that Ms. Brunner is a friend of
21 Ms. Olsen’s who served on the MEPOA board at the time that MEPOA sold the water
22 system to Montezuma.” Ms. Olsen and the Company believe it is necessary to clarify the

23 ³⁴ *Id.* at 492:2-21 (Burns).

24 ³⁵ *Id.* at 493:16-22 (Burns).

25 ³⁶ *Id.* at 494:3-7 (Burns). *See also* A.R.S. § 49-351(A) (“The Department of Environmental
26 Quality is designated as the responsible agency for this state to take all actions necessary or
appropriate to ensure that all potable water distributed or sold to the public through public water
systems is free from unwholesome, poisonous, deleterious or other foreign substances...”)

1 record on that issue--Ms. Olsen was not a friend of Ms. Brunner's at the time the water
2 company purchased the water company.

3 On page 15, the ROO also states that "[a]t the time the well [no. 4] was drilled
4 Montezuma also did not have a use permit from Yavapai County allowing Montezuma to
5 use the residential parcel for commercial purpose." Unfortunately, the evidence does not
6 fully support that statement in the ROO. To start, Ms. Olsen was informed by the County
7 that she need not apply for the use permit until the well was to be put online and serve the
8 residential customers. Originally, MRWC sought County approval of the well in 2006
9 when the Company submitted a site plan for the drilling of Well No. 4.³⁷ Yavapai County
10 approved the well site plan on or about July 19, 2006.³⁸ The Company also obtained
11 approval from the ADWR relating to the drilling of Well No. 4.³⁹

12 As such, when the Company drilled Well No. 4, Ms. Olsen believed that the
13 Company was in compliance with legal requirements from ADWR and the County.⁴⁰
14 MRWC clearly did *not* intend to avoid County and ADWR regulations. In March 2010,
15 Yavapai County issued a Conditional Use Permit ("CUP") to MRWC for construction and
16 operation of Well No. 4.⁴¹ Mr. Dougherty then filed a complaint with the County relating
17 to that permit, alleging violations of the setback requirements in the County zoning
18 regulations. In turn, the use permit expired and Yavapai County issued a notice of
19 violation to MRWC.⁴²

20 After Mr. Dougherty raised these issues, MRWC then began the process of
21 obtaining easement rights from the adjacent property owner (the Burches) to comply with

22 ³⁷ *Id.* at 122:4-25 (Olsen); Ex. A-2, Olsen DT at 27-28; Ex. A-3, Olsen RT at 13-14.

23 ³⁸ *Id.*; Ex. A-28, ADWR Pump Installation Complete Report at 6, Well Site Plan approved by
Yavapai County Development Services on 7/19/2006.

24 ³⁹ *Id.*

⁴⁰ Tr. I at 123:6-14 (Olsen).

25 ⁴¹ Ex. A-17, letter from Yavapai County Development Services re: granting use permit dated
3/15/2010.

26 ⁴² Ex. A-3, Olsen RT at 13.

1 the County setback requirements, which would allow MRWC to obtain a CUP for Well
2 No. 4. At that point, MRWC had no choice but to pursue condemnation proceedings
3 against the adjacent property owner to comply with the County setback requirement.⁴³
4 MRWC had an appraisal done for the value of the easement rights and the Company then
5 negotiated an agreement with the property owners for those access rights.⁴⁴ Fortunately,
6 the adjacent property owner signed the Easement Agreement on July 23, 2013. By Mr.
7 Dougherty's own testimony, that easement will resolve the setback requirements under the
8 County well code relating to Well No. 4.⁴⁵ If and when the County issues a use permit
9 for Well No. 4, the Company will be right back where it started with the County back in
10 March 2010 when it originally issued the first CUP for Well No. 4. The Company still is
11 the process of seeking a Use Permit from the County for Well No. 4.

12 On page 18, the ROO notes that "Mr. Dougherty strenuously objects to having
13 Montezuma use Well No. 4 for its system because he believes the commercial use is
14 incompatible with the residential locale, because he is concerned that Well No. 4 may
15 adversely impact his own and other private wells, because he is concerned that Well No. 4
16 may adversely impact Montezuma Well and Wet Beaver Creek, and because Montezuma
17 drilled the well and attempted to place the well into service for the water system without
18 first having obtained all state and county permissions and after having allegedly provided
19 inaccurate information to county and state authorities."

20 Unfortunately, the ROO fails to address the additional evidence presented at
21 hearing that known hydrological evidence shows that Montezuma Well and Well No. 4
22 are not located with the same aquifer system—meaning that operation of Well No. 4 will
23
24

25 ⁴³ Ex. A-2, Olsen DT at 5-7.

26 ⁴⁴ Tr. I at 118:16-119:4 (Olsen); Ex. A-3, Olsen RT at 20-21.

⁴⁵ Tr. IV at 826:16-20 (Dougherty).

1 not have any impacts on Montezuma Well.⁴⁶ As noted in Exhibit A-52, the author of the
2 USGS Study for Montezuma Well (Raymond Johnson) concluded that "[B]ecause the
3 water feeding the well comes from such a great depth, it is relatively disconnected from
4 area wells that are tapping into the shallower lake deposits of the Verde formation, but
5 could be impacted by deeper wells, up gradient from the well."⁴⁷ Well No. 4 is down
6 gradient and not connected to Montezuma Well.⁴⁸ This is an example of an issue raised
7 by Mr. Dougherty without any supporting or corroborating evidence. Put simply, the
8 USGS report refutes Mr. Dougherty's claim of harm to Montezuma Well with respect to
9 Well No. 4. The USGS report notes that Montezuma Well is supported through the
10 Redwall Formation. Well No. 4 is supported from the Verde Formation.

11 On Page 67, the ROO states that "the proposal as submitted by Montezuma in the
12 Rask Docket bears signs of alteration to eliminate the first item in the list of work --
13 unevenness in the line preceding item #2, traces of text visible above the line preceding
14 item #2, and the fact that the first item listed is labeled as #2." MRWC believe it is
15 important to clarify the record on that issue. As shown on the documents attached hereto
16 as **Exhibit B**, Ms. Olsen asked Mr. Rask to delete materials from the bid because she felt
17 that the Company could provide those materials cheaper. The ROO's insinuations that the
18 Rask proposal was improperly altered are unsupported and lines 2-7 on page 67 of the
19 ROO should be deleted.

20 On Page 108, the ROO states that "[i]t is not appropriate for Montezuma to Pay
21 Ms. Olsen as an independent contractor, and we instruct Montezuma to cease that
22 practice... and further will prohibit from making any 'outside services' payments to Ms.
23

24 ⁴⁶ Ex. A-52, "Explore The Mystery: Montezuma Study goes public", The Bugle 4/7/2011; Ex: A-
25 54, USGS Report re: Source of Groundwater to Montezuma Well,
Johnson/DeWitt/Wirt/Arnold/Horton, 2011; Ex. A-55, Article re: USGS Study.

26 ⁴⁷ Ex. A-52 at 2.

⁴⁸ Tr. III at 536-537 (Olsen).

1 Olsen/Mr. Arias or any of her family members, all of whom must be paid through salaries
2 or wages.." That statement should be stricken for two reasons. First, the Commission
3 does not have authority to dictate how MRWC conducts its business relating to employees
4 and/or outside contractors. The Commission may decide whether to recognize or deny
5 expenses as proper operating expenses in a rate case, but the Commission does not have
6 authority to prohibit the Company from hiring outside contractors or to dictate how the
7 Company establishes wages or salaries. Second, the ROO fails to recognize that MRWC
8 paid wages to Ms. Olsen and her children as employees until the Company couldn't pay
9 the necessary federal fees and taxes associated with employees. These types of
10 statements in the ROO are unnecessary and should be deleted from the final order.

11 On page 109, the ROO states that "...the majority of the ADEQ-related activity can
12 be attributed to Montezuma's failure to come into compliance with the arsenic MCL in a
13 timely fashion, a status that had already occurred when Montezuma first encountered Mr.
14 Dougherty." That statement is contrary to the testimony of Ms. Burns stating that Ms.
15 Olsen and MRWC took reasonable and diligent efforts to meet the arsenic standards.

16 On this issue, the ROO also fails to address the evidence that Mr. Dougherty
17 intentionally delayed and/or prevented MRWC's efforts to install an arsenic plant. After
18 MRWC filed its WIFA application in 2009-2010, WIFA initially approved the loan for the
19 ATF and issued a Categorical Exemption from any requirements under the National
20 Environmental Policy Act (NEPA).⁴⁹ Mr. Dougherty then filed a citizen's complaint with
21 WIFA alleging that the arsenic treatment plant and well no. 4 would cause harm to the
22 surrounding environment.⁵⁰ On February 5, 2010 WIFA then revoked its approval of the
23 loan for the arsenic treatment due solely to the complaint filed by Mr. Dougherty:

24 *WIFA received a citizen's complaint regarding some environmental*
25 *concerns of the arsenic facility installation project. Due to these newly*

26 ⁴⁹ *Id.* at 85:20-86:7 (Olsen).

⁵⁰ *Id.* at 86:8-12 (Olsen); Ex. A-18, WIFA Financing Application at 3; Ex. A-1, Olsen DT at 10.

1 *raised issues which were not addressed in the Environmental Review*
2 *Checklist*, WIFA has rescinded the initial categorical exemption and
3 decided to require a higher level of environmental review.⁵¹

4 Even more troubling is that when Mr. Dougherty filed his complaint with WIFA,
5 he did *not* produce any definitive evidence of environmental impacts from the ATF or
6 operation of Well No. 4 and he did not produce any such evidence at trial.⁵² As noted, not
7 only did Mr. Dougherty not offer any corroborating evidence on these issues, but known
8 hydrological evidence shows that Montezuma Well and Well No. 4 are not located with
9 the same aquifer system—meaning that operation of Well No. 4 and the ATF will not
10 have any impacts on Montezuma Well.⁵³

11 On page 111, the ROO states that "Ms. Olsen 'abused' this injunction against Mr.
12 Dougherty, using it "as a sword" rather than a shield and as a way to prevent interactions
13 with Montezuma." That statement does not belong in the order and is unsupported.
14 Although the ROO does not view being threatened by a shotgun from Mr. Buddeke as
15 important, Ms. Olsen did and understandably so. The ultimate use of the injunction does
16 not bear on whether it was reasonable and necessary for Ms. Olsen to pursue legal
17 remedies after being physically threatened by both Mr. Dougherty and Mr. Buddeke, a
18 fact corroborated by letters docketed with the Commission by other parties.

19 On pages 120-121, the ROO makes statements relating to the Company entering a
20 loan agreement for the purchase of Well No. 4 and potential violations of Commission
21 statutes. The ROO goes on to state that "Montezuma used capital that would have been
22 available for other utility purposes and may have precluded or at least diminished its

23 ⁵¹ Ex. A-18, email from S. Konrad to P. Olsen dated 2/5/2010.

24 ⁵² Tr. IV at 768:18-22 (Dougherty) ("Q: And nobody has really done a definitive analysis whether
25 the operation of Well No. 4 will impact Montezuma Well or Wet Beaver Creek as we sit here
26 today, agreed: A: Agreed.")

⁵³ Ex. A-52, "Explore The Mystery: Montezuma Study goes public", The Bugle 4/7/2011; Ex: A-
54, USGS Report re: Source of Groundwater to Montezuma Well,
Johnson/DeWitt/Wirt/Arnold/Horton, 2011; Ex. A-55, Article re: USGS Study.

1 ability to acquire capital at reasonable rates going forward." That claim is not supported
2 by substantial evidence.

3 To the contrary, MRWC is a company that has been in existence since 1969. There
4 were no significant upgrades and improvements prior to Ms. Olsen's involvement with
5 MRWC. Ms. Olsen has dramatically improved the quality of water service and the
6 ROO's statement that the Well No. 4 land purchase compromised the Company financing
7 is contrary to the underlying evidence. When MRWC and Ms. Olsen executed the Deed
8 of Trust with Ms. Brunner, they did not encumber any used or useful asset of MRWC
9 because Well No. 4 and its associated property have not been used by MRWC to provide
10 utility service.⁵⁴ Not only that, but the Deed of Trust for the property has been paid in full
11 and there are no encumbrances or loan obligations against that property.

12 Finally, on page 136, the ROO includes factual findings relating to ethnic prejudice
13 and states that "we do not find credible Ms. Olsen's assertions that Mr. Dougherty has
14 been motivated by ethnic prejudice in his investigation or Montezuma's operations." That
15 issue was not placed before the Commission by MRWC in closing briefs or at hearing and
16 it is inappropriate to address that in any Commission order here.

17 On page 137, the ROO goes on to state that "if Montezuma had never filed invalid,
18 incomplete or false/misleading documents with the Commission, this matter would have
19 been resolved long ago." Unfortunately, that statement is not supported by the underlying
20 evidence. In reality, Mr. Dougherty's conduct has gone well beyond any measure of good
21 faith opposition to the arsenic leases and that statement in the ROO should be stricken as
22 contrary to the evidence:

- 23 • Mr. Dougherty filed a citizen's complaint with WIFA relating to
24 issuance of a categorical exclusion for the WIFA financing—in effect
opposing the Company's arsenic plant.⁵⁵

25 ⁵⁴ A.R.S. § 40-285.

26 ⁵⁵ Tr. II at 760:11-14 (Dougherty).

- 1 • Mr. Dougherty filed objections and a complaint with ADEQ relating
to issuance of the approval to construct for the ATF.⁵⁶
- 2 • Mr. Dougherty filed objections with WIFA and/or ADEQ regarding
3 MRWC's construction of the water line from Well No. 4 to Well No.
4 1 with the Company's system.⁵⁷
- 5 • Mr. Dougherty contacted the Center for Biological Diversity
6 requesting "any ideas [they] have to increase pressure on this
7 Company..."⁵⁸
- 8 • Mr. Dougherty wrote in emails to the Commission and ADEQ that he
9 was "spearheading" an effort to stop MRWC's operation of Well No.
10 4.⁵⁹
- 11 • Mr. Dougherty testified that WIFA withdrew the categorical
12 exemption under NEPA and approval of financing "based on [his]
13 various arguments about the impact of Well No. 4 on Montezuma
14 Well and Beaver Creek."⁶⁰
- 15 • Mr. Dougherty filed complaints with Yavapai County relating to
16 zoning and use permits pertaining to Well No. 4.⁶¹
- 17 • Mr. Dougherty filed comments in MRWC's 2008 rate case—long
18 before the issue of the arsenic leases ever arose.⁶²
- 19 • Mr. Dougherty contacted the property owners (the Burches) adjacent
20 to Well No. 4 relating to granting an easement to MRWC for setback
21 requirements under the Yavapai County zoning code.⁶³
- 22 • Mr. Dougherty contacted the National Park Service regarding
23 operation of Well No. 4 and filing objections with WIFA and the
24 Commission.⁶⁴
- 25 • Mr. Dougherty sent numerous emails to RUCO and its former
26 director Jodi Jerich requesting that RUCO intervene in the pending
rate case and when RUCO withdrew its intervention, Mr. Dougherty

⁵⁶ *Id.* at 760:15-18 (Dougherty).

⁵⁷ *Id.* at 760:19-23 (Dougherty).

⁵⁸ *Id.* at 774:5-775:5 (Dougherty); Ex. A-43, emails from J. Dougherty re: Battle in Verde Valley.

⁵⁹ Tr. II at 777:12-778:23 (Dougherty); Ex. A-45, email from J. Dougherty to Commission Staff dated 5/23/2012.

⁶⁰ Tr. II at 780:9-20 (Dougherty).

⁶¹ *Id.* at 782:1-24 (Dougherty).

⁶² *Id.* at 790:24-791:2 (Dougherty).

⁶³ *Id.* at 791:21-25 (Dougherty).

⁶⁴ *Id.* at 792:9-11 (Dougherty).

1 opposed RUCO's withdrawal from the rate case.⁶⁵

- 2 • Mr. Dougherty mailed flyers to customers of MRWC raising issues
3 about the operation of the Company, including termination of service
4 without notice.⁶⁶ Mr. Dougherty acknowledged at hearing that "I
5 don't have a complete conclusive proof that that in fact occurred. I
6 just heard from that folks that this had happened to them. So I raised
7 the question in the flyer."⁶⁷ Mr. Dougherty also refused to name
8 those alleged individuals at hearing.
- 9 • Mr. Dougherty composed and filed on line petitions opposing the
10 Company's operation of Well No. 4.⁶⁸
- 11 • Mr. Dougherty posted various editorials in local newspapers
12 opposing the Company and its efforts to install the ATF and operate
13 Well No. 4.⁶⁹
- 14 • Mr. Dougherty sent various emails and communications to Yavapai
15 County Supervisors relating to issuance of the CUP for Well No. 4.⁷⁰

16 **VII. CONCLUSION.**

17 For the reasons noted above, the Recommended Opinion and Order ("ROO") dated
18 March 26, 2014 does not fairly apply the testimony and evidence presented at hearing in
19 this matter. The ROO also violates general notions of due process and fairness by
20 adopting rates using methodology that was not presented in any witness testimony in the
21 case and is not supported by substantial evidence on various issues set forth above.
22 MRWC respectfully requests that the Commission take an objective look at the underlying
23 evidence and testimony and adopt the exceptions noted above.

24 ⁶⁵ *Id.* at 792:13-24 (Dougherty).

25 ⁶⁶ *Id.* at 793:1-7946-22 (Dougherty).

26 ⁶⁷ *Id.* at 797:21-24 (Dougherty); Ex. A-34, Flyer to Montezuma Rimrock Company Customers.

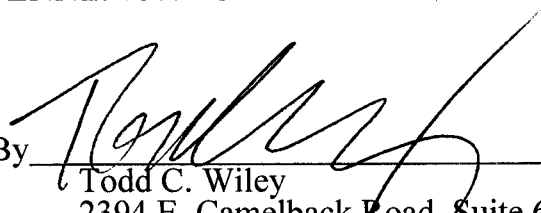
⁶⁸ *Id.* at 801:1-6 (Dougherty).

⁶⁹ *Id.* at 801:7-11 (Dougherty).

⁷⁰ *Id.* at 801:12-21 (Dougherty).

1 RESPECTFULLY SUBMITTED this 4th day of April, 2014.

2
3 FENNEMORE CRAIG

4
5 By 
6 Todd C. Wiley
7 2394 E. Camelback Road, Suite 600
8 Phoenix, AZ 85016
9 Attorneys for Montezuma Rimrock Water
 Company, LLC.

10 An original and 13 copies
11 of the foregoing was filed
12 this 4th day of April, 2014,
 with:

13 Docket Control
14 Arizona Corporation Commission
 1200 West Washington Street
 Phoenix, Arizona 85007

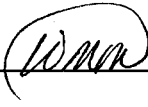
15 A copy of the foregoing
16 was hand delivered/mailed/emailed this
 4th day of April, 2014, to:

17 Sarah N. Harpring
18 Administrative Law Judge
19 Arizona Corporation Commission
 1200 W. Washington
 Phoenix, Arizona 85007

20 Charles Hains
21 Wes Van Cleve
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5 9029136

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EXHIBIT A

WILEY, TODD

To: Patricia Olsen
Subject: RE: Quote Request

----- Forwarded Message -----

From: "Jourdan, Daniel [HDS]" <Daniel.Jourdan@hdsupply.com>
To: "PATSY@MONTEZUMAWATER.COM" <PATSY@MONTEZUMAWATER.COM>
Sent: Monday, March 31, 2014 2:03 PM
Subject: Quote Request

Attached is the quotation you requested. If you have questions or concerns please do not hesitate to contact us at **800-548-1234** and we will be more than happy to assist you. If you wish to turn this quote into an order either fax it to us at **847-689-3030** or you can email it to customerservice@usabluebook.com.

Thank you for choosing USABlueBook where you always get "The Best Treatment."

Dan Jourdan
Customer Service
USABlueBook

Everything for Water & Wastewater Operations!

Office 847 689-3000 ext. 76996
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QUOTATION
HDSFM
D/B/A USABBLUEBOOK
PO Box 9004
Gurnee, IL 60031-9004
Toll free: 1-800-548-1234
Fax: (847) 689-3030

NO. 651268

Page 2

03/31/14

Ship-to: 5
MRWC

3031 E BEAVER CREEK RD
RIMROCK AZ 86335
USA

Bill-to: 956514
MONTEZUMA RIMROCK WATER CO

3031 E. BEAVER CREEK RD
RIMROCK, AZ 86335
USA

REFERENCE #	EXPIRES	SLSP	TERMS	WH	FREIGHT	SHIP VIA
03/31/2014	04/30/14	CRJ	NET 30	21	FXD/PPD	VENDOR'S CHOICE

QUOTED BY: CRJ | QUOTED TO: PATRICIA OLSEN

ITEM	DESCRIPTION	QUANTITY	UM	PRICE	UM	EXTENSION
------	-------------	----------	----	-------	----	-----------

TO ORDER --

For your convenience, you may simply sign below and return via fax to 847-689-3030. We will process your order promptly and fax a confirmation so you know we have it. If you prefer to call your order in or have additional questions or concerns, you may contact our Customer Service Department @ 800-548-1234. Please note any changes to the quantities or shipping address. Thanks for choosing USABBlueBook.

Authorization Signature

PO Number (if required)

MERCHANDISE	MISC	TAX	FREIGHT	TOTAL
30563.00	.00	.00	7000.00	37563.00

USE THIS QUOTE # ON PO's!

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QUOTED BY: CRJ | QUOTED TO: PATRICIA OLSEN

ITEM	DESCRIPTION	QUANTITY	UM	PRICE	UM	EXTENSION
13717	8000 Gallon Hydrotank	1	EA	30563.00	EA	30563.00
	150# 96"x22' with Saddles					
CHOLD	Sales Order on Hold	1	EA	.00	EA	.00
	PLEASE ALLOW 9-11 WEEKS FOR DELIVERY AFTER DRAWING APPROVAL A.R.O.					
	TO PLACE AN ORDER FOR A CUSTOM TANK:					
	1. FAX A SIGNED COPY OF THE QUOTE AND PURCHASE ORDER (IF REQUIRED) TO 847-689-3030.					
	2. ALSO, INCLUDE A SIGNED COPY OF THE TANK DRAWING WITH ALL DESIRED FITTING LOCATIONS AND ANY OTHER CHANGES THAT NEED TO BE MADE.					
	3. IN SOME INSTANCES A MANUFACTURER'S CAD DRAWING MUST BE APPROVED. IN THIS CASE THE CAD DRAWING MUST BE REVIEWED AND APPROVED BEFORE TANK MANUFACTURING BEGINS. CAD DRAWINGS GENERALLY TAKE 1-2 WEEKS TO COMPLETE.					
	4. CUSTOM TANKS WILL NOT BE SENT TO PRODUCTION UNTIL A SIGNED DRAWING HAS BEEN RECEIVED.					
	5. THE CUSTOMER IS RESPONSIBLE FOR OFFLOADING APPROXIMATE WEIGHT IS 12,000 POUNDS.					

Please note that your order may be subject to applicable taxes based
on current rates at the time your order is completed.

CONTINUED

WILEY, TODD

To: Patricia Olsen
Subject: RE: Wessels quote

----- Forwarded Message -----

From: Eric Cheetham <eccheetham@j-bsalesco.com>
To: Patricia Olsen <patsy@montezumawater.com>
Sent: Wednesday, April 2, 2014 10:59 AM
Subject: RE: Wessels quote

Here is the quote LESS SHIPPING RATE. I'll have that over to you when I receive it.
We do not do installation.

From: Patricia Olsen [<mailto:patsy@montezumawater.com>]
Sent: Wednesday, April 02, 2014 10:19 AM
To: Eric Cheetham
Subject: Re: Wessels quote

Hi Eric,
I still haven't received your quote. Just checking to see if I missed it or not. Thanks, Patricia

Patricia Olsen, President
Montezuma Rimrock Water Co. LLC
3031 E. Beaver Creek Rd., Rimrock, AZ 86335
928-592-9211
<http://www.montezumawater.com/>

From: Eric Cheetham <eccheetham@j-bsalesco.com>
To: "patsy@montezumawater.com" <patsy@montezumawater.com>
Sent: Wednesday, April 2, 2014 8:22 AM
Subject: Wessels quote

Good morning Patricia.
What is the job name (so I can write up a formal quote)?

Once I get a job name I can have it over to you within about half an hour.

Thank you,
Eric Cheetham
J&B Sales Co.
Inside Sales/Warehouse
Phone- 602-258-1545
Fax-602-716-9648

****Ask me about****
Link-Seal Modular Seals
Century-Line Sleeves
Cell-Cast Disks
Penetration Sealing Solutions



J&B Sales Co.

3441 N. 29th Ave.
Phoenix, AZ 85017
(602) 258-1545 Phone
(602) 258-9719 Fax

Quotation No. 2014-4-2-8:40

J & B Sales Co
3441 N. 29th Ave.
Phoenix, AZ 85017
Phone: 602-258-1545
Fax: 602-258-9719

Quote Date: 4/2/2014
Salesperson: Eric Cheetham
Date: 4/2/2014 10:57:22 AM
Terms:
Freight: **Freight Prepaid and Add**
Job: **MRWC HYDRO
TANK
REPLACEMENT
RIMROCK, AZ 86335**
Engineer: **None Selected**

TO: **Patricia Olsen**
ATTN: **None Selected**

We are pleased to quote on the following equipment for the subject job, subject to J & B Sales Co. terms and conditions. This quotation and all equipment items and prices may change without notice, and void after 30 days unless otherwise stated. J & B Sales Co. reserves the right to substitute motor manufacturers. All orders and contracts are subject to acceptance by our company. Performance is contingent upon non-occurrence of strikes or other delays beyond our control. This job quote supersedes any previous quotation for the same job. Terms and conditions provided to J & B Sales Co. after date of this quotation do not apply.

*****Price does not include freight. J&B Sales Co. does not install Hydro-Pneumatic tanks*****

Qty	Description & Tag	Wt (lbs)	Total Net Price
	OTHER PRODUCTS		
1	Tag: Hydro-Pneumatic 96Inch x 276Inch ASME Carbon Steel Tank Set at 100PSI Horizontal with Welded Saddles Up to 6 2inch Connections 14Inch x 18Inch Manway Epoxy Coated Interior/Exterior	11250	\$67,607.00
	Total OTHER PRODUCTS		\$67,607.00
	Total	11250	\$67,607.00

EXHIBIT B



P.O. Box 10
Rimrock, AZ 86335
928-592-9211

April 4, 2012

Rask Construction

Attn: Norm Rask

RE: Your quote for the installation of 4" transmission line from well #4 to well #1

After reviewing your quote and reviewing my costs, I feel that MRWC is able to save money by providing the material for this project. With that, I would like you to delete the material from your quote and resubmit.

Cordially,

A handwritten signature in dark ink, appearing to read "Patricia D. Olsen", is written over the word "Cordially,".

Patricia D. Olsen, President

Cc: Norm Rask, Rask Construction

**RASK CONSTRUCTION
GENERAL CONSTRUCTION**

P.O. Box 387
Camp Verde, AZ 86322

Phone 928567-5655
928-567-3203
Fax 928-567-5654

4-12-12
MRWC
Attn: Patricia Olsen
RE: Revise quote for 4" transmission line.

Per your request to delete the material from the quote for
the above project, please see attached.

RASK CONST.

NORM RASK /bo-Rask

CC Patricia Olsen/ MRWC

PROPOSAL

RASK CONSTRUCTION

GENERAL CONSTRUCTION

P.O. Box 387

Camp Verde, AZ 86322

(928) 567-3203

Fax (928) 567-5654

No. 1

Date 4-12-12

Sheet No. 1

Proposal Submitted To:

Name Montezuma-Rimrock water co.
Street East Gold mine and towers Dr.
City Rimrock
State Az.
Phone 300-3291

Work To Be Performed At:

Street From Tieman to Bently and Towers.
City Rimrock State Az.
Date of Plans Revised 2-10
Architect EHS

We hereby propose to furnish the materials and perform the labor necessary for the completion of

Items:

#2 Provide the necessary equipment & labor to install the
Water line from the well on tieman to well #1 on towers.
Pressure test & sanitize the new line.
#3 Connecting of the transfer line by others.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of Dollars \$68,592.00.

with payments to be made as follows: Progress draws.

Rcvd. \$7,000.00

Balance \$61,592.00

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

Respectfully submitted RASK CONST.

Per NORM RASK

Note—This proposal may be withdrawn by us if not accepted within 10 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date 4/20/12

Signature [Signature]

Signature [Signature]